

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

REYES CALBILLO and IRENE
CALBILLO;

Plaintiffs,

v.

WELLS FARGO BANK, N.A., dba
WELLS FARGO HOME MORTGAGE;
and DOES 1-25, inclusive;

Defendants.

CASE NO.:
LA CV16-02799 BRO (AJW_x)

JUDGMENT OF DISMISSAL

*[Assigned to the Hon. Beverly Reid
O'Connell]*

On July 20, 2016, the Court entered an Order granting the Motion to Dismiss the First Amended Complaint, without prejudice, filed by defendant WELLS FARGO BANK, N.A., successor by merger with Wells Fargo Bank Southwest, N.A., f/k/a Wachovia Mortgage, FSB, f/k/a World Savings Bank, FSB (“Wells Fargo”) (erroneously sued as “Wells Fargo Bank, N.A., dba Wells Fargo Home Mortgage”) as follows:

**ORDER GRANTING DEFENDANT’S MOTION TO
DISMISS PURSUANT TO LOCAL RULE 7-12 [19]**

Pending before the Court is Defendant Wells Fargo Bank, N.A.’s (“Defendant”) Motion to Dismiss Plaintiffs Reyes Calbillo and Irene Calbillo’s (collectively, “Plaintiffs”) First Amended Complaint (“FAC”) pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. No. 19.) Defendant filed its Motion on July 5, 2016, noticing a hearing date of August 8, 2016. (Id.) Under this Court’s Local Rules, a party must oppose a motion at least twenty-one (21) days prior to the scheduled hearing date. *See* C.D. Cal. L.R. 7-9. Accordingly, Plaintiffs’ Opposition, if any, was due no later than July 18, 2016. *See id.*; *see also* Fed. R. Civ. P. 6(a)(1)(C), (a)(5), (a)(6)(A).

On May 27, 2016, Defendant filed a Motion to Dismiss Plaintiffs’ Original Complaint. (*See* Dkt. No. 11.) On June 8, 2016, the Court issued an Order to Show Cause as to why it should not grant Defendant’s Motion after Plaintiff failed to timely file an Opposition. (Dkt. No. 13.) In the Order to Show Cause, the Court noted that pursuant to Local Rule 7-12, the failure to file an opposition “may be deemed consent to the granting . . . of the motion.” *See* C.D. Cal. L.R. 7-12. In response, Plaintiffs’ Counsel explained that his computer was attacked by a virus that deleted all of his files and scheduling

reminders. (See Dkt. No. 16.) The Court accepted these reasons as good cause and allowed Plaintiffs to file a First Amended Complaint. (See Dkt. Nos. 14, 17.) Defendant then filed a Motion to Dismiss Plaintiffs' First Amended Complaint. (Dkt. No. 19.) Plaintiffs have again failed to timely respond to Defendant's Motion. As the Court already provided Plaintiffs with notice in its Order to Show Cause that failure to respond may be considered consent to the granting of the motion, the Court finds that Plaintiffs' failure to respond for a second time constitutes such consent. Accordingly, the Court GRANTS Defendant's Motion to Dismiss Plaintiffs' FAC **without prejudice** pursuant to Local Rule 7-12. The hearing scheduled for August 8, 2016, is hereby **VACATED**.


IT IS SO ORDERED. :

Accordingly:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Pursuant to Local Rule 7-12, the First Amended Complaint is dismissed, **without prejudice**;
2. Judgment is entered in favor of defendant WELLS FARGO BANK, N.A.; and
3. Plaintiffs, Reyes Calbillo and Irene Calbillo will recover nothing in this action from defendant WELLS FARGO BANK, N.A.

DATED: August 5, 2016



HON. BEVERLY REID O'CONNELL
UNITED STATES DISTRICT JUDGE